

**FILED**  
**United States Court of Appeals**  
**Tenth Circuit**

**UNITED STATES COURT OF APPEALS**

**FOR THE TENTH CIRCUIT**

**October 12, 2010**

**Elisabeth A. Shumaker**  
**Clerk of Court**

NATIONAL LABOR RELATIONS  
BOARD,

Petitioner,

v.

CAPITAL IRON WORKS COMPANY,

Respondent.

No. 10-9555  
(NLRB No. 17-CA-24499)

**JUDGMENT**

Before **LUCERO, EBEL, and TYMKOVICH**, Circuit Judges.

This cause was submitted upon the application of the National Labor Relations Board for summary entry of a judgment against Respondent, Capital Iron Works Company, its officers, agents, successors, and assigns, enforcing its order dated August 26, 2010, in Case No. 17-CA-24499, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, Capital Iron Works Company, its officers, agents, successors, and assigns, shall abide by said order (See Attached Order and Appendix).

Entered for the Court,



Carlos F. Lucero, Circuit Judge

NATIONAL LABOR RELATIONS BOARD

v.

CAPITAL IRON WORKS COMPANY

**ORDER**

Capital Iron Works Company, Topeka, Kansas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

- (a) Failing and refusing to bargain collectively and in good faith with Boilermakers Local Lodge 83, affiliated with International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, AFL-CIO, the Union, by failing to execute a written contract (the collective-bargaining agreement) with the Union as the exclusive collective-bargaining representative of the following unit:

All production and maintenance employees, including truck drivers, employed by Respondent at its facility located at 701 Southeast Adams Street, Topeka, Kansas, but excluding office employees, professional employees, guards and supervisors as defined in the Taft-Hartley Act, and those excluded from the unit by the National Labor Relations Board certification in Case 17-RC-3895.

- (b) Failing to grant employees a periodic wage increase in accordance with the collective-bargaining agreement.
- (c) Failing to make 401(k) contributions on behalf of unit employees for hours worked in 2008.
- (d) Failing to reimburse employees for safety glasses at the monetary level specified in the collective-bargaining agreement.
- (e) Failing and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive collective-bargaining representative of the unit.

- (f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Execute and implement a written contract containing the collective-bargaining agreement reached by the parties on July 7, 2008, give retroactive effect to the terms and conditions of the agreement, and make the unit employees whole for any loss of earnings and other benefits attributable to our unlawful conduct, with interest, in the manner set forth in the remedy section of the Board's decision.
  - (b) Make employees Darren Janssen, Gary King, and Christopher Ortega whole for losses due to the failure to grant a periodic wage increase in accordance with the collective-bargaining agreement, with interest as set forth in the remedy section of the Board's decision.
  - (c) Make all required 401(k) contributions that have not been made for hours worked by unit employees in 2008, including any additional amounts due the plan, and make whole the unit employees for any loss of interest that they may have suffered and any expenses ensuing from the Respondent's unlawful failure to make the 401(k) contributions for hours worked in 2008, as set forth in the remedy section of the Board's decision.
  - (d) Make employee Kermit Schrenk whole for losses due to the failure to reimburse him for safety glasses at the monetary level specified in the collective-bargaining agreement, with interest as set forth in the remedy section of the Board's decision.
  - (e) Furnish the Union with the information that it requested on April 10 and May 14, 2009.
  - (f) Within 14 days after service by the Region, post at its facility in Topeka, Kansas, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these

proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 2008.

- (g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
- (h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

## APPENDIX

### NOTICE TO EMPLOYEES

POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES  
COURT OF APPEALS ENFORCING AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Boilermakers Local Lodge 83, affiliated with International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, AFL-CIO, by failing to execute a written contract (the collective-bargaining agreement) with the Union as the exclusive collective-bargaining representative of the following unit:

All production and maintenance employees, including truck drivers, employed by us at our facility located at 701 Southeast Adams Street, Topeka, Kansas, but excluding office employees, professional employees, guards and supervisors as defined in the Taft-Hartley Act, and those excluded from the unit by the National Labor Relations Board certification in Case 17-RC-3895.

WE WILL NOT fail to grant you a periodic wage increase in accordance with the collective-bargaining agreement.

WE WILL NOT fail to make 401(k) contributions for hours worked by our employees.

WE WILL NOT fail to reimburse you for safety glasses at the monetary level specified in the collective-bargaining agreement.

WE WILL NOT fail and refuse to furnish the Union information that is relevant and necessary to its role as the exclusive collective-bargaining representative of our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL execute and implement a written contract containing the collective-bargaining agreement reached by us and the Union on July 7, 2008, WE WILL give retroactive effect to the terms and conditions of the agreement, and WE WILL make the you whole for any loss of earnings and other benefits you may have suffered because of our unlawful conduct, with interest.

WE WILL make whole employees Darren Janssen, Gary King, and Christopher Ortega for our failure to grant a periodic wage in accordance with the collective-bargaining agreement, with interest.

WE WILL make all required 401(k) contributions that have not been made for hours worked by our employees in 2008, including any additional amounts due the plan, and WE WILL make whole our unit employees for any loss of interest that they may have suffered and any expenses ensuing from our unlawful failure to make the 401(k) contributions for hours worked in 2008.

WE WILL make whole employee Kermit Schrenk for our failure to reimburse him for safety glasses at the monetary level specified in the collective-bargaining agreement, with interest.

WE WILL furnish the Union with the information that it requested on April 10 and May 14, 2009.

CAPITAL IRON WORKS CO.